

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK and THE BOARD OF :  
EDUCATION OF THE CITY SCHOOL DISTRICT OF :  
THE CITY OF NEW YORK, : No. 15 Civ. 8220 (AJN) (RLE)  
Plaintiffs, :  
-against- :  
LIBERTY MUTUAL INSURANCE COMPANY, :  
Defendant. :  
-----x

**PLAINTIFFS' NOTICE  
OF MOTION FOR  
DEFENSE COSTS AND  
ATTORNEYS' FEES  
INCURRED IN DEFENSE  
OF UNDERLYING  
ACTIONS**

PLEASE TAKE NOTICE that Plaintiffs — The City of New York (“City”) and the Board of Education of the City School District of the City of New York a/k/a the New York City Department of Education (“DOE”) — will move for the entry of an order, pursuant to the Court’s September 28, 2017 Memorandum and Order granting Plaintiffs’ partial motion for summary judgment [Dkt. No. 42], for reimbursement of defense costs and attorneys’ fees that Plaintiffs have incurred to date in defending themselves in the following three actions pending in the Supreme Court of the State of New York: (a) *Patricia James v. New York City School Construction Authority, New York City Department of Education, and City of New York*, Index No. 021897/2014 (the “James Action”); (b) *Kathleen Mertz v. The City of New York, the New York City Department of Education, and New York City School Construction Authority*, Index No. 006209/2014 (the “Mertz Action”); and (c) *Mary Anne V. Guarnaccia v. City of New York, New York City School Construction Authority, and New York City Department of Education*, Index No. 505355/2014 (the “Guarnaccia Action”). Pursuant to CPLR §§ 5001 and 5004, Plaintiffs further seek an award of prejudgment interest at the statutory rate of 9% per annum through the date judgment is entered.

Plaintiffs rely on the accompanying October 20, 2017 Declaration of Anjan Mishra and the declarations annexed thereto, which are, namely, the October 19, 2017 Declarations of Stacey L. Salvo, Brian D. Cody, and Vlad Turkiya, each of which attaches a single table-report exhibit. Plaintiffs seek damages on their sixth cause of action of \$3,511.60 incurred in defense of the *James* Action, damages on their eighth cause of action of \$9,332.25 incurred in defense of the *Mertz* Action, and damages on their tenth cause of action of \$3,921.00 incurred in defense of the *Guarnaccia* Action, plus accrued prejudgment interest on each claim at the statutory rate of 9% per annum through the date judgment is entered. Plaintiffs reserve their right to seek recovery of the additional defense costs they continue to incur in the respective underlying actions, including interest thereon, until the time they receive a defense.

The motion will be heard at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 906, New York, New York 10007, before the Honorable Alison J. Nathan, United States District Judge, at a time and date to be fixed by the Court. Defendant Liberty Mutual Insurance Company must file opposition papers on or before November 3, 2017, in accordance with the so-ordered briefing schedule [Dkt. No. 45].

Dated: New York, New York  
October 20, 2017

ZACHARY W. CARTER  
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City of New York  
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and the Board of Education of the City  
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By:   
Anjan Mishra  
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